

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

X

ANTONINO BUSSA,

Plaintiff,

-against-

HENAN MEIYA CULTURAL & COMMERCIAL  
DEVELOPMENT COMPANY.

Defendant.

NOT FOR PUBLICATION  
**MEMORANDUM AND ORDER**  
11-CV-6387 (CBA)(LB)

X

**AMON, Chief United States District Judge:**

On December 29, 2011, plaintiff filed this *pro se* action alleging employment discrimination under the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12112-12117 by the defendant. Plaintiff’s request to proceed *in forma pauperis* is granted pursuant to 28 U.S.C. § 1915 solely for the purpose of this Order. Plaintiff is directed to show cause by written affirmation, filed within 30 days from the date of this Order, why his ADA claim should not be dismissed.

Under 28 U.S.C. § 1915 (e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action is “(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” The Court construes plaintiff’s pleadings liberally particularly because they allege civil rights violations. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185, 191-93 (2d Cir. 2008).

Plaintiff, a resident of Staten Island, New York, alleges that in September 2011 he applied to teach English in China with a company located in Zhengzhou, China. (Compl. ¶ 8.) He was

hired by an agent named “Maryhan.” (Id.) On September 9, 2011, plaintiff, who has cerebral palsy, informed the agent that he has a “mild physical disability.” (Id. ¶¶ 7-8.) In November 2011, plaintiff traveled to China and met with “school leader Vicky in Jiaozhou, China” who told him that he could not teach English in China because he had a physical disability of which she had not been informed. (Id. ¶ 8.) Plaintiff returned home on December 5, 2011. (Id.) He was not reimbursed for any travel expenses. He filed a claim with the Equal Employment Opportunity Commission (“EEOC”) regarding the defendant’s alleged discriminatory conduct on December 15, 2011 and was issued a right to sue letter by the EEOC on December 27, 2011. (Id. ¶ 10; See Attachment, EEOC “Dismissal and Notice of Rights.”)

Title I of the ADA makes it unlawful for any employer to “discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U.S.C. § 12112(a). The ADA defines an employer as “a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.” 42 U.S.C. § 12111(5)(A). The ADA does not apply to employment actions taken outside the United States by foreign employers, unless the foreign employer is “controlled” by an American employer. 42 U.S.C. 12112(c)(2)(B); Ofori-Tenkorang v. American Int’l Gp., Inc., 460 F.3d 296, 303 n.6 (2d Cir. 2006).

In this case, it appears from the complaint that defendant is a foreign corporation located in Zhengzhou, China, and there is no indication that defendant is “controlled” by an American employer. The alleged adverse employment action also took place outside the United States.

Thus, the ADA does not apply to defendant, plaintiff has failed to state a claim on which relief may be granted, and the complaint should be dismissed without prejudice. 28 U.S.C.

§ 1915(e)(2)(B)(ii). However, in an abundance of caution and given plaintiff's *pro se* status, he is afforded thirty days to show cause why his complaint should not be dismissed. If plaintiff fails to show cause within the thirty days afforded, the complaint shall be dismissed without prejudice.

Plaintiff is hereby directed to show cause why his complaint should not be dismissed within thirty (30) days from the date of this Order. Plaintiff's response should be titled "Response to Order to Show Cause," bear docket number 11-CV-6387 (CBA). All further proceedings shall be stayed for thirty (30) days or until plaintiff has complied with this Order. If plaintiff fails to respond to this Order within thirty days, the complaint shall be dismissed without prejudice. If submitted, plaintiff's response shall be reviewed pursuant to 28 U.S.C.

§ 1915(e)(2)(B). The Court certifies pursuant to 28 U.S.C. §1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: Brooklyn, New York  
February 6, 2012

/s/  
Carol Bagley Amon  
United States District Judge